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82-1647

In The

Supreme Court of the United States

October Term, 1982

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by GERALD W. McENTEE, ITS TRUSTEE AD LITEM,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTIONS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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QUESTION PRESENTED FOR REVIEW

1. Whether the Pennsylvania Supreme Court erred in affirming the order of the Commonwealth Court which imposed fines on the Union and its members, in view of the fact that the employees went on strike in response to an unfair labor practice committed by the Commonwealth.

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No.

In The

Supreme Court of the United States

October Term, 1982

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by GERALD W. McENTEE, ITS TRUSTEE AD LITEM,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTIONS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

The petitioner, Council 13, American Federation of State, County, and Municipal Employees, AFL-CIO, by Gerald W. McEntee, its Trustee *Ad Litem,* petitions for a writ of certiorari to review the judgment and order of the Supreme Court of Pennsylvania entered in this proceeding on December 15, 1982.

OPINIONS BELOW

The judgment and order of the Supreme Court of Pennsylvania (App. A, *infra*) is not reported. The order of the Commonwealth Court of Pennsylvania (App. B., *infra*) is also not reported.

JURISDICTION

The judgment and order of the Supreme Court of Pennsylvania was entered December 15, 1982 and this petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

STATUTORY PROVISIONS INVOLVED

Section 7 of the National Labor Relations Act, 29 U.S.C. §157, provides in pertinent part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

Section 8(a)(1) of the National Labor Relations Act, 29 U.S.C. §158(a) provides in pertinent part:

> It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section [7]. . . .

Section 301(9) of the Pennsylvania Public Employee Relations Act, (PERA) Act of July 23, 1970, P.L. 563, 42 P.S. §1101.301(9), defines a "strike" as:

> [C]oncerted action in failing to report for duty, the willful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in conditions or compensation or the rights, privilege or obligations of employment.

Article IV, Section 401 of the Pennsylvania Public Employee Relations Act, 43 P.S. §1101.401 provides that:

> It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerned activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

Section 1101 of the Pennsylvania Public Employees Relations Act, 43 P.S. §1101.1101, provides that:

> Strikes by guards at prisons or mental hospitals or employes directly involved with and necessary to the functioning of the courts of this Commonwealth are prohibited at any time. If a

> strike occurs the public employer shall forthwith initiate in the Court of Common Pleas of the jurisdiction where the strike occurs, an action for appropriate equitable relief including but not limited to injunctions. If the strike involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief, either in the Court of Common Pleas of the jurisdiction where the strike has occurred or the Commonwealth Court.

Sections 1201(a)(1) and (3) of the Pennsylvania Public Relations Act, 43 P.S. §1101.1201, provide that:

> *Section 1201.* (a) Public employers, their agents or representatives are prohibited from:
>
> (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.
>
> (2) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization.

STATEMENT OF THE CASE

The State Correctional Institution at Pittsburgh is a correctional facility located in Allegheny County, Pennsylvania and supervised by the Bureau of Corrections, Department of Justice, Commonwealth of Pennsylvania.

On or about April 4, 1980, a verbal confrontation occurred between correction officer Ronald Horvat, President of the

American Federation of State, County and Municipal Employees, Local 2500 (hereinafter "the Union") and Major of Guards, Lawrence Weyandt regarding Horvat's distribution of a union petition. As a result of the verbal confrontation between the two men, Weyandt physically assaulted Horvat in an attempt to forcibly obtain a copy of the petition then in Horvat's possession.

As a result of this confrontation, on April 6, 1980, at approximately 6:00 a.m., forty-one correction officers went on strike against the State Correctional Institution at Pittsburgh.

Later that same day, the Commonwealth of Pennsylvania sought a preliminary injunction in the Commonwealth Court in order to halt the strike. The Honorable Genevieve Blatt of the Commonwealth Court granted the motion for preliminary injunction. Following a hearing on April 18, 1980, Judge Blatt orally continued the injunction and informed the defendants that they would be found in contempt if they did not comply with the injunction order by the 6 o'clock a.m. shift on Saturday, April 19, 1980.

By order dated April 19, 1980, Judge Blatt found the striking correction officers to be in civil contempt of her order of April 16, 1980, and imposed fines on the Union and on all strikers who continued to refuse to comply with the April 16, 1980 order. A fine of ten thousand dollars a day was levied against the Union, a fine of seven hundred fifty dollars a day was levied against the leaders of the strike, the Union local officers and members of the executive board, and a fine of five hundred fifty dollars a day was levied against strike participants until such time as the correction officers agreed to comply with the court's order.

The strike ended at 2:00 p.m. on April 22, 1980, three and one-half days after the correction officers and the Union were held in civil contempt.

On June 12, 1980, Judge Blatt issued an order (App. B, *infra*), levying a fine against the Union in the amount of twenty thousand dollars ($20,000.00), levied a fine against certain officers and members of the Union in the amount of fifteen hundred dollars ($1,500.00) each, levied fines against other members of the Union in the amount of one thousand dollars ($1,000.00) each, levied a fine against one Union member in the amount of seven hundred fifty dollars ($750.00) and levied a fine against one other Union member in the amount of two hundred fifty dollars ($250.00).

On June 30, 1980, the Union appealed Judge Blatt's June 12, 1980 order to the Supreme Court of Pennsylvania.

On July 18, 1980 the Union filed an Unfair Labor Practice Charge with the Pennsylvania Labor Relations Board ("PLRB") alleging that Major Weyandt's April 4, 1980 attack on Ronald Horvat constituted a violation of Section 1201(a)(1) and (3) of the Pennsylvania Employment Relations Act ("PERA").

On February 9, 1981, a Hearing Examiner for the PLRB found, in agreement with the Union, that through Major Weyandt's April 4, 1980 attack on Ronald Horvat, the Commonwealth violated Sections 1201(2)(1) and (3) of the PERA (App. E, *infra*).

On April 19, 1982, the Union filed a petition for reduction or remittitur of fines with the Pennsylvania Commonwealth Court (App. C, *infra*). On September 24, 1982, Judge Blatt of the Commonwealth Court denied the Union's petition for reduction or remittitur of fines (App. D, *infra*).

Finally, on December 15, 1982, the Pennsylvania Supreme Court entered a judgment and order (App. A, *infra*) affirming

the June 12, 1980 order of the Commonwealth Court which levied fines against the Union and against certain Union members.

REASONS FOR GRANTING THE WRIT

The question whether employees may respond through collective action to an Unfair Labor Practice levelled at their bargaining representative, is an important and recurring one in the administration of both the National Labor Relations Act and the Pennsylvania Employee Relations Act.

The decision of the Pennsylvania Supreme Court at issue here, failed to consider, as a mitigating factor, that the correction officers at the State Correctional Institution at Pittsburgh went on strike in response to an act which was ultimately determined by the PLRB to be an unfair labor practice. This decision is therefore contrary to a strong federal policy in favor of granting special status to those employees who engage in concerted activity in response to employer unfair labor practices.

Thus, Section 7 of the NLRA guarantees to employees the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ."[1]

---

1. Correspondingly, Article IV, Section 401 of the PERA states that:

> It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as maybe required pursuant to a maintenance of membership provision in a collective bargaining agreement.

In interpretating this language the NLRB has held that employees who strike in response to an employer's unfair labor practice are deserving of special status with respect to reinstatement to their jobs. *See Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 278 (1956).

Likewise, the Union and its correction officer members should be entitled to special consideration since they did, in fact, go out on strike in response to what has been determined by the PLRB to be an employer unfair labor practice. Thus, the April 16, 1980, strike by the correction officers, was a not unjustified response to an unwarranted assault upon the Union President, which conduct constituted an unfair labor practice in violation of state law.

The Pennsylvania Supreme Court failed to give proper weight to this factor in its review of the order of the Commonwealth Court. The order of the Pennsylvania Supreme Court is therefore directly in conflict with the strong federal policy set out in *Mastro Plastics, supra,* and therefore warrants review by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD KIRSCHNER
KIRSCHNER, WALTERS,
WILLIG, WEINBERG &
DEMPSEY
Attorneys for Petitioner

APPENDIX A — JUDGMENT AND ORDER OF SUPREME COURT OF PENNSYLVANIA

SUPREME COURT OF PENNSYLVANIA

Eastern District

No. 80-3-651

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTION

Appellee

v.

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by GERALD W. McENTEE, ITS TRUSTEE AD LITEM, et al.

Appellants

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the ORDER of the COMMONWEALTH COURT, be, and the same is hereby AFFIRMED.

By the Court

s/ Marlene F. Lachman
Marlene F. Lachman, Esq.
Prothonotary

Dated: December 15, 1982

Appendix A

IN THE SUPREME COURT OF PENNSYLVANIA

Eastern District

No. 80-3-651

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTION

Appellee

v.

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by GERALD W. McENTEE, ITS TRUSTEE AD LITEM, et al.

Appellants

Appeal from the Order entered June 12, 1980 in the Commonwealth Court of Pennsylvania at No. 867 C.D. 1980

SUBMITTED: October 19, 1982

O R D E R

Per Curiam

FILED: December 15, 1982

The Order of the Commonwealth Court is affirmed.

APPENDIX B — ORDER OF BLATT, J. DATED JUNE 12, 1980

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 867 C.D. 1980

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTION

Plaintiff

v.

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by GERALD W. McENTEE, ITS TRUSTEE AD LITEM, et al.

Defendants

AND, NOW, this 12th day of June, 1980, after hearing on the motion of the Plaintiff for the entering of judgment against the Defendants in the amount of the fines imposed by our order of April 19, 1980 and after consideration as well of the further motion of the Plaintiff that the said fines be collected from the individual Defendants by means of payroll deductions spread over a sufficient number of payroll periods to provide ultimately for full payment of the fines,

IT IS HEREBY ORDERED:

1) That the motion of the Plaintiff for the entering of judgment against the Defendants in the amount of the fines imposed by our order of April 19, 1980 is granted with the modification that all of the said fines shall be reduced by one-

half, this modification being made in view of the fact that the Defendants began negotiations with representatives of the Plaintiff very shortly after the issuance of our order of April 16, 1980, and continued regularly in such negotiations until an agreement was reached and until the work stoppage enjoined by the said order was discontinued on April 22, 1980.

2) That the further motion of the Plaintiff that the fines be collected from the individual employees concerned by means of regular payroll deductions is denied, it being our belief that, although this procedure represents a generous offer on the part of the Plaintiff and would also very probably be advantageous for the individual Defendants, the procedure is not legally permissible.

3) That the following judgments shall be entered:

A. Judgment in the amount of twenty thousand dollars ($20,000.00) representing fines against AFSCME Local 2500 by its trustee ad litem Ronald A. Horvat for the participation in enjoined activity for a period of four (4) days in contempt of this Court.

B. Judgment in the amount of one thousand five hundred dollars ($1,500.00) representing fines against the following Officers and Members of the Executive Board of AFSCME Local 2500 for the participation in enjoined activity for a period of four (4) days in contempt of this Court.

1. Ronald A. Horvat
   President, AFSCME Local 2500
   3620 Grenada Street
   Pittsburgh, Pa. 15212

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2. Ronald R. Lazenby
Vice-President, AFSCME Local 2500
251 Lilac Drive
Monroeville, Pa. 15146

3. Michael A. Holleran
Secretary, AFSCME Local 2500
6911 Sturgeon Street
Pittsburgh, Pa. 15202

4. Clarence Ross Sumney, Jr.
P.O. Box 65
West Elizabeth, Pa. 15088

5. Frank Salvay, Jr.
Member, Executive Board of AFSCME
Local 2500
205 Charlemma Drive
Pittsburgh, Pa. 15214

6. Richard L. Caponi
Member, Executive Board of AFSCME
Local 2500
963 Streets Run Road
Pittsburgh, Pa. 15236

7. David J. Durosko
Member, Executive Board of AFSCMR
Local 2500
1301 Martha Street
Pittsburgh, Pa. 15234

C. Judgment in the amount of one thousand dollars ($1,000.00) representing fines against the following employees of

the Bureau of Correction working at the State Correctional Institution at Pittsburgh for their participation in enjoined activity for a period of four (4) days in contempt of this Court:

1. Santo S. Andolina
   2008 Straubs Lane
   Pittsburgh, Pa. 15212

2. Lee A. Baker
   600 W. North Avenue
   Pittsburgh, Pa. 15212

3. Kenneth E. Baily
   302 Sixth Avenue
   Carnegie, Pa. 15106

4. Anthony W. Balestra
   83 S. Linwood Street
   Pittsburgh, Pa. 15205

5. Kevin C. Barnes
   3125 Faronia Street
   Pittsburgh, Pa. 15204

6. Myron D. Bartko, Jr.
   436 Division Avenue
   Pittsburgh, Pa. 15202

7. William L. Berie
   3011 Vensel Way
   Pittsburgh, Pa. 15212

8. Harvey J. Beron, Jr.
   77 Kendall Avenue
   Pittsburgh, Pa. 15202

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9. Stephen J. Bezila, Jr.
206 Rebecca Square
Pittsburgh, Pa. 15209

10. Robert R. Birch
292 Cypress Hill Drive
Pittsburgh, Pa. 15235

11. Albert Bodick
840 Western Avenue
Pittsburgh, Pa. 15233

12. Joseph B. Bodner
407 Nantucket Drive
Pittsburgh, Pa. 15236

13. Thomas G. Bodner
407 Nantucket Drive
Pittsburgh, Pa. 15236

14. Michael S. Boris
1122 Oakland Avenue
Port Vue, Pa. 15133

15. Frank J. Boronyak
61 Lincoln Avenue
Pittsburgh, Pa. 15205

16. Rodney R. Bouvier
335 Center Avenue
Pitcairn, Pa. 15140

17. Jack R. Bowen, Jr.
344 Ashland Avenue
Pittsburgh, Pa. 15228

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18. John E. Bracey
115 Sylvan Drive
Lower Burrell, Pa. 15068

19. James E. Brandenstein
32 N. Joslyn Drive
Pittsburgh, Pa. 15206

20. Earl L. Brewer
412 Fourth Street
Smithton, Pa. 15479

21. Robert F. Brewer
202 Parkwood Drive, R.D. #3
Mars, Pa. 16046

22. John T. Britt
181 Watson Boulevard
Pittsburgh, Pa. 15214

23. Howard J. Brittain
4 Hubbard Place
Pittsburgh, Pa. 15212

24. Albert L. Brocious
Box 325, R.D. #5
Gibsonia, Pa. 15044

25. Charles S. Brockhoff
324 Allegheny Avenue
Pittsburgh, Pa. 15239

26. Floyd F. Bush, Jr.
14 Washington Street
Latrobe, Pa. 15650

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27. Ronald L. Bussard
440 N. Home Avenue
Pittsburgh, Pa. 15202

28. Henry L. Callithen, II
R.D. #2, Bear Creek Road
Cabot, Pa. 16023

29. Wayne R. Caponi
120 Southern Avenue, Apt. 2
Pittsburgh, Pa. 15211

30. Frank J. Catterall
3619 Purdue Street
Pittsburgh, Pa. 15212

31. John R. Chester
1521 Woodland Avenue
Pittsburgh, Pa. 15212

32. Robert J. Chetoka
149 Connie Drive
Pittsburgh, Pa. 15214

33. Daniel P. Clarke
38 Robin Hood Drive
Zelienople, Pa. 16063

34. Paul A. Cobbett
1032 Francis Road
Pittsburgh, Pa. 15234

35. John J. Connors
4074 Brandon Road
Pittsburgh, Pa. 15212

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36. Paul R. Conroy
615 Means Avenue
Pittsburgh, Pa. 15202

37. Milton S. Corwin
3301 Garvers Ferry Road
Lower Burrell, Pa. 15068

38. Robert R. Counts
324 Millbridge Street
Pittsburgh, Pa. 15210

39. William A. Crabb
1133 Woodburne Avenue
Pittsburgh, Pa. 15226

40. John Cropcho
1248 Lieshman Avenue
New Kensington, Pa. 15068

41. Robert Henry Davis
9240 Highland Road
Pittsburgh, Pa. 15237

42. Albert R. Dehler
1315 Westfield Street
Pittsburgh, Pa. 15216

43. Gerard C. Dettlinger
3803 Middleboro Road
Pittsburgh, Pa. 15234

44. Joseph D. Dinger
2105 Main Street
Pittsburgh, Pa. 15215

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45. John T. Donnelly, Jr.
227 Havenwood Drive
Coraopolis, Pa. 15108

46. George Dudash, Jr.
20 Jenny Lane
Coraopolis, Pa. 15108

47. Howard P. Duing
5267 Wolfe Drive, Apt. 6
Pittsburgh, Pa. 15236

48. Steve Dutkowski
1115 Stanford Road
Pittsburgh, Pa. 15212

49. David P. Eiler
572 Carnival Drive
Pittsburgh, Pa. 15239

50. Dallas T. Enscoe, Jr.
2606 Connecticut Avenue
Pittsburgh, Pa. 15216

51. Robert C. Fagan
248 Service Way
Pittsburgh, Pa. 15201

52. Edward M. Fitzpatrick
226 Elias Drive
Pittsburgh, Pa. 15235

53. Kenneth W. Fuchs
2021 Eggers Street
Pittsburgh, Pa. 15212

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54. Ralph G. Gaertner
908 Erdner Avenue, Apt. 3
Pittsburgh, Pa. 15202

55. James G. Gould
248 Kittanning Pike
Pittsburgh, Pa. 15215

56. Clifford J. Grogan, Jr.
75 N. Fremont Avenue, Apt. 4
Pittsburgh, Pa 15202

57. James E. Grogan
616 Florence Avenue
Pittsburgh, Pa. 15202

58. Eugene J. Guerra
628 Semple Avenue
Pittsburgh, Pa. 15202

59. Ernest Gubser
4022 Brandon Road
Pittsburgh, Pa. 15212

60. Robert A. Hagmaier
1834 Cecil Street
Pittsburgh, Pa. 15215

61. Ronald R. Hagmaier
210 18th Street
Pittsburgh, Pa. 15215

62. Robert P. Healy
952 Stanford Road
Pittsburgh, Pa. 15212

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63. Metro Hlovchiec
965 Stanford Road
Pittsburgh, Pa. 15212

64. Edwin F. Hoetzlein
5372 Orchard Hill Drive
Pittsburgh, Pa. 15236

65. Marvin W. Hoffman
R.D. #4
Mercer, Pa. 16137

66. James John Jackson
2115 Rockledge Street
Pittsburgh, Pa. 15212

67. Bernard J. Jacobs
220 S. Home Avenue, Apt. 108
Pittsburgh, Pa. 15202

68. Stanley Kaszalowicz
347 Glenn Avenue
Glendale, Pa. 15106

69. Edward J. Kennedy
790 Shady Drive E., Apt. S-4
Pittsburgh, Pa. 15228

70. Jerry C. Kennedy
1119 Ridgeland Drive
Pittsburgh, Pa. 15212

71. William C. Kearns
Box 33, R.D. #3
Tarentum, Pa. 15084

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72. George J. Kephart, Jr.
228 E. McIntyre Avenue
Pittsburgh, Pa. 15214

73. Stephen S. Kimak, Jr.
3045 Vensel Way
Pittsburgh, Pa. 15212

74. Walter W. Klinkner
1643 Reamer Street
Pittsburgh, Pa. 15226

75. Joseph H. Koch
4532 Carrol Street
Pittsburgh, Pa. 15224

76. William M. Koerbel
10 Craft Avenue
Pittsburgh, Pa. 15223

77. Daniel A. Kohut
1322 Kenberma Avenue
Pittsburgh, Pa. 15216

78. Gerard C. Kolling
109 Endres Drive
Zelienople, Pa. 16063

79. Dennis M. Kostolansky
Box 216-C, R.D. #4
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80. Raymond J. Kotomski
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81. Frank L. Kough
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82. John S. Kraszewski
125 Batemen Street
Pittsburgh, Pa. 15209

83. Robert A. Krepps
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84. William Kishik
2651 Brighton Road
Pittsburgh, Pa. 15212

85. William D. Kushik
3912 Kleber Street
Pittsburgh, Pa. 15212

86. David E. Lahey
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Butler, Pa. 16001

87. David A. Lapiska
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88. Roy H. Layne, Jr.
1703 Columbia Place
Pittsburgh, Pa. 15212

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89. Frederick C. Lester
528 Climax Street
Pittsburgh, Pa. 15210

90. Alonzo A. Letson
23 St. Leo Street
Pittsburgh, Pa. 15203

91. Kenneth R. Lockhard
1360 Missouri Avenue
Bridgeville, Pa. 15017

92. Gerard J. Long
3536 Gerber Avenue
Pittsburgh, Pa. 15212

93. Harold A. Maas, Jr.
112 Ashland Avenue
Butler, Pa. 16001

94. Donald C. Madara
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95. Francis Maksin, Jr.
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96. Marc A. Mantini
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98. Raymond J. Marzoch
2721 Milburn Street
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99. James F. McFetridge
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1810 Kenneth Avenue
Arnold, Pa. 15068

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1213 Howard Street
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108. Timothy C. O'Connor
1646 Dellrose Street
Pittsburgh, Pa. 15210

109. Sylvester C. Oldynski
2300 Fairland Street
Pittsburgh, Pa. 15210

110. Michael J. O'Keefe
117 Bonvue Street
Pittsburgh, Pa. 15214

111. Joseph P. O'Malley
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1931 Saw Mill Run Boulevard
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115. William F. Perry
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402 Fairywood Street
Pittsburgh, Pa. 15205

117. Anthony Pollazzon
224 Kennedy Avenue
Pittsburgh, Pa. 15214

118. William L. Pollak
9 Sunny Drive
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Pittsburgh, Pa. 15218

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Pittsburgh, Pa. 15202

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124. Patrick F. Reilly
2300 Bernard Street
Pittsburgh, Pa. 15234

125. Alan D. Robinson
821 Taylor Avenue
Pittsburgh, Pa. 15202

126. Vernon L. Roberson
25 Perry Lane
Pittsburgh, Pa. 15229

127. William J. Rump
2434 Brownsville Road, Apt. 8
Pittsburgh, Pa. 15210

128. Larry P. Rusch
R.D. #1, Vandivort Drive
Mars, Pa. 16046

129. Wallace G. Susta
21 Crest Drive
Pittsburgh, Pa. 15215

130. Lawrence D. Scanlon
190 N. Jackson Avenue
Pittsburgh, Pa. 15202

131. George F. Schillinger, III
1134 High Street
Pittsburgh, Pa. 15212

132. Richard A. Schneider
1073 Woodlow Street, Apt. 112
Pittsburgh, Pa. 15205

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133. Gary K. Schwartz
23 S. Jackson Avenue
Pittsburgh, Pa. 15202

134. John J. Schwartzbauer
4910 Lucerne Avenue
Pittsburgh, Pa. 15214

135. Bernard P. Slan
3130 Belleville Street
Pittsburgh, Pa. 15234

136. Richard A. Slavec
117 Dewey Street
Pittsburgh, Pa. 15223

137. Richard C. Smith
1401 Jefferson Heights Road
Pittsburgh, Pa. 15235

138. David S. Snyder
1277 Firwood Drive
Pittsburgh, Pa. 15243

139. John M. Sopkiewicz
3088 Country Side Drive
Allison Park, Pa. 15101

140. Robert T. Sparbanie, Sr.
219 S. Home Avenue
Pittsburgh, Pa. 15202

141. Richard R. Stader
714 Woods Run Avenue
Pittsburgh, Pa. 15212

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142. Michael L. Stangler
406 W. Ninth Avenue
Tarentum, Pa. 15084

143. John J. Swyka
303 Forliview Road
Glenshaw, Pa. 15116

144. Robert Taylor
811 Swissvale Avenue
Pittsburgh, Pa. 15221

145. William W. Thoma
454 B. Mower Drive
Pittsburgh, Pa. 15236

146. Edwin R. Thomas
4917 Sciota Street
Pittsburgh, Pa. 15224

147. Jacob J. Tokarski
175 Santiago Road
Imperial, Pa. 15126

148. John J. Vogel
5265 Wickliff Street
Pittsburgh, Pa. 15201

149. Daniel J. Walker
1406 Taylor Avenue
New Kensington, Pa. 15068

150. Charles J. Walsh
119 Persimmon Place, R.D. #3
Mars, Pa. 16046

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151. James S. Weaver, Jr.
429 Hallett Place
Pittsburgh, Pa. 15229

152. John W. Weaver, Jr.
933 Center Avenue
Pittsburgh, Pa. 15229

153. Dennis L. White
103 Thorn Run Road, R.D. #2
Export, Pa. 15632

154. William A. Wilson, II
2412 Patterson Street
Pittsburgh, Pa. 15203

155. DeWayne B. Winbush
10 Buffington Avenue
Pittsburgh, Pa. 15210

156. Donald A. Wingertsahn
1300 Wisconsin Avenue, Apt. #6
Pittsburgh, Pa. 15216

157. George R. Zaiser
36 Beltzhoover Avenue
Pittsburgh, Pa. 15210

158. Ronald G. Ambrass
227 Essen Street
Pittsburgh, Pa. 15214

159. Raymond E. Bousun
612 Moon Clinton Road
Coraopolis, Pa. 15108

Appendix B

160. George H. Evans
7731 Edgenton Avenue
Pittsburgh, Pa. 15221

161. Curtis E. Fike
Box #34, R.D. #2
Leechburg, Pa. 15656

162. Richard M. Jones
7023 Hermitage Street
Pittsburgh, Pa. 15208

163. Ronald R. Limmer
3730 Hiawatha Street
Pittsburgh, Pa. 15212

164. Cyril F. Weiland
102 Windsor Drive
Irwin, Pa. 15642

165. Joseph A. White
2004 Termon Avenue
Pittsburgh, Pa. 15212

166. Frederick G. Williamson
R.D. #2, Box 203B
Slippery Rock, Pa. 16057

167. Stephen F. Zeckowski
259 Chruchill Road
Turtle Creek, Pa. 15145

168. William J. Balzer
22 Merritt Avenue
Pittsburgh, Pa. 15227

Appendix B

D. Judgment in the amount of seven hundred fifty dollars ($750.00) representing fines against the following employee of the Bureau of Correction working at the State Correctional Institution at Pittsburgh for his participation in the enjoined activity for a period of three (3) days in contempt of this Court:

Gerald J. Mullen
1137 Troy Hill Road
Pittsburgh, Pa. 15212

E. Judgment in the amount of two hundred fifty dollars ($250.00) representing fines against the following employee of the Bureau of Correction working at the State Correctional Institution at Pittsburgh for his participation in the enjoined activity for a period of one (1) day in contempt of this Court:

Dewey T. Livingston, Jr.
1957 Lincoln Road Ext.
Pittsburgh, Pa. 15235

s/ Genevieve Blatt
Genevieve Blatt, Judge

CERTIFIED FROM THE
RECORD
JUNE 12, 1980
s/ Francis C. Barbush
CHIEF CLERK

APPENDIX C — PETITION FOR REMITTITUR OR REDUCTION OF FINES

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 867 C.D. 1980

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTION

Plaintiff

v.

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by GERALD W. McENTEE, ITS TRUSTEE AD LITEM, et al.

Defendants

Defendants, by and through their Attorney, Richard Kirschner, file this Petition for Remittitur or Reduction of Fines entered by the Honorable Genevieve Blatt in her Order dated June 12, 1980. In her June 12, 1980 Order, Judge Blatt entered judgment against the defendants based on fines previously imposed by an Order dated April 19, 1980. In support of this Petition, the defendants show as follows:

1. On or about April 4, 1980, a confrontation occurred between Defendant, Ronald Horvat, President of the American Federation of State, County and Municipal Employees Local 2500 ("Local 2500") and Major of Guards, Lawrence Weyandt, regarding the distribution of a Local 2500 Petition.

2. The confrontation resulted in a physical assault by Weyandt on Defendant Horvat.

3. As a result of this confrontation, commencing on or about April 16, 1980, at approximately 6:00 A.M., about forty-one correction officers I and II went on strike against the State Correctional Institution at Pittsburgh.

4. Also on April 16, 1980, in response to the motion of the Commonwealth of Pennsylvania for a preliminary injunction, the Honorable Genevieve Blatt enjoined the strike by defendant corrections officers at the State Correctional Institution at Pittsburgh.

5. At a Hearing two days later on the continuance of the preliminary injunction, Judge Blatt orally ordered the continuance and informed the defendants that they would be found in contempt if they did not comply with the injunction order by the 6:00 o'clock A.M. shift on Saturday, April 19, 1980.

6. By order dated April 19, 1980, the corrections officers and Local 2500 were found in civil contempt and fines were imposed on them for each day or part thereof until normal work activities were resumed.

7. The strike ended at 2:00 P.M. on April 22, 1980, three and one-half days after the corrections officers and Local 2500 were held in civil contempt.

8. Judge Blatt's June 12, 1980 Order levied a fine against Local 2500 in the amount of $20,000.00, levied a fine against certain officers and members of Local 2500 in the amount of $1,500.00 each, levied fines against other members of Local 2500 in the amount of $1,000.00 each, levied a fine against one member of Local 2500 in the amount of $750.00, and levied a fine against one other member of Local 2500 in the amount of $250.00.

Appendix C

9. On or about July 18, 1980, Local 2500 filed unfair labor practice charges with the Pennsylvania Labor Relations Board ("PLRB") alleging that the Commonwealth had violated Sections 1201(a)(1) and (3) of the Public Employee Relations Act through the assault on Ronald Horvat.

10. On or about February 9, 1981, PLRB Hearing Officer Elliott Newman found that the Commonwealth was motivated by anti-union animus in forcibly attempting to obtain a copy of Local 2500's Petition, [See *PLRB v. Commonwealth of Pennsylvania (Department of Justice, Bureau of Corrections)* 12 PPER ¶12077 (1981)], and that the Commonwealth, therefore, violated Sections 1201(a)(1) and (3).

11. Under the National Labor Relations Act, as amended, 29 U.S.C. §151, *et seq.*, it is well settled that a strike in response to an employer's unfair labor practices entitles the striking employees to special status with respect to reinstatement to their jobs. [See *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 278 (1956)]. Likewise, Local 2500 and its corrections officer members should receive special consideration by this Court, since they did, in fact, go out on strike in response to what has been determined by the PLRB to be an employer unfair labor practice.

12. Thus, the April 16, 1980 strike by the corrections officers, was a response to an unwarranted assault upon the Local 2500 president, which conduct constituted an unfair labor practice in violation of state law.

13. More than two years have elapsed since the end of the strike at the State Correctional Institution at Pittsburgh, and during that period of time neither Local 2500 nor any of the corrections officer defendants have engaged in any strike or picketing activities against the Institution. Further, the individual corrections officers

have conducted themselves as law abiding citizens aware of their duties and obligations as corrections officers to the citizens of the Commonwealth of Pennsylvania.

14. The $20,000.00 fine levied against Local 2500 will serve to cripple Local 2500 for an indefinite future period, as Local 2500 is a small local union with approximately 189 members and a treasury of less than $300.00. The fine against Local 2500 will not only serve to bankrupt Local 2500, but it will also render Local 2500 unable to provide any sort of representation, even on a limited basis, to its members.

15. The individual corrections officers, who earn an average of $15,000.00 per year, have to expend all of their funds for the the basic necessities of life. The individual fines, if they must be paid, will, almost of necessity, deprive some families of the corrections officers of the basic necessities of life.

16. A preferable course for this Court to take in attempting to establish a stable labor relations policy at the State Correctional Institution at Pittsburgh would be to remit the fines levied against Local 2500 and against the corrections officer members of Local 2500 in their entirety or, in the alternative, reduce said fines to a nominal amount. In this manner the dignity of the judicial process will be vindicated without at the same time imposing a concommitant economic penalty which will adversely impact upon the individual corrections officers and on the viability of Local 2500 as a labor organization.

WHEREFORE, Defendants, by their attorneys, move that this Court remit the fines in their entirety, or, in the alternative, reduce them to a nominal sum.

Appendix C

Respectfully submitted,

s/ Richard Kirschner
RICHARD KIRSCHNER
Kirschner, Walters, Willig,
Weinberg & Dempsey
Attorneys for Defendant

Dated: August 19, 1982

Appendix C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 867 C.D. 1980

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTION

Plaintiff

v.

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by GERALD W. McENTEE, ITS TRUSTEE AD LITEM, et al.

Defendants

O R D E R

AND NOW, this day of 1982, upon consideration of the defendants' Petition for Remittitur or Reduction of Fines, it is hereby ordered and decreed that the fines levied against the defendants by the Honorable Genevieve Blatt in her Order dated June 12, 1980 are remitted in their entirety; are reduced to the amount of for each defendant.

_____

J

Appendix C

COMMONWEALTH OF PENNSYLVANIA :
: S.S.
COUNTY OF PHILADELPHIA :

I, BRUNO DELLANA, Council Director, District Council 84, American Federation of State, County and Municipal Employees, AFL-CIO, being duly sworn according to law, hereby depose and say that the facts contained in the foregoing Petition for Remittitur or Reduction of Fines are true and correct to the best of my knowledge, information and belief.

s/ Bruno Dellana
BRUNO DELLANA

Sworn to and subscribed

before me this 19th day
of August 1982

s/ Judith M. Kahler
Notary Public

JUDITH M. KAHLER
Notary Public, Phila., Phila. Co.
My Commission Expires April 16, 1984

Appendix C

CERTIFICATE OF SERVICE

I, RICHARD KIRSCHNER, hereby certify that a true and correct copy of the foregoing Petition for Remittitur or Reduction of Fines has been forwarded this date by first-class mail, postage prepaid, to:

Kristen W. Brown
Assistant Attorney General
Bureau of Labor Relations
900 North Sixth Street
Harrisburg, PA 17102

s/ Richard Kirschner
RICHARD KIRSCHNER
Kirschner, Walters, Willig
Weinberg & Dempsey
Attorneys for Defendant

Dated: August 19, 1982

APPENDIX D — MEMORANDUM OPINION AND ORDER OF JUDGE BLATT HEARD SEPTEMBER 24, 1982

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 867 C.D. 1980

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTION

Plaintiff

v.

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, etc. et al.,

Defendants

BEFORE:

HONORABLE GENEVIEVE BLATT, Judge

HEARD: September 24, 1982

MEMORANDUM OPINION AND ORDER BY JUDGE BLATT

FILED: October 4, 1982

The defendants in the instant action have filed a petition for remittitur or reduction of the fines levied against them by our

order of June 12, 1980 for their participation in enjoined activity. In response, the plaintiffs have filed an application for dismissal of the defendants' petition. These matters were consolidated for hearing.

In their petition for remittitur or reduction of the fines, the defendants contend that 1) the fines as levied will cripple Local 2500, a branch of the defendants' labor organization, and deprive the members' families of the basic necessities of life,[1] 2) there has been no further trouble with any of the individual defendants since the strike,[2] and 3) the defendants should receive special consideration because the strike here concerned was in response to an unfair labor practice.[3] The plaintiff in its petition to dismiss, contends that this Court lacks jurisdiction because the issues raised in the defendants' petition are now pending before the Supreme Court of Pennsylvania.[4]

While we are not convinced that we do have jurisdiction in this instance, we believe that it would be inappropriate to exercise it even if we did. The defendants concede that the issues are the same as the issues involved in their appeal now before the Supreme Court. They argue, however, that, just because they have protected their legal rights to appeal to the Supreme Court by filing an appeal there, they should not now be precluded from also petitioning here. We must disagree. Clearly, in the interest of justice and judicial economy, these litigants should not be permitted to petition two courts concurrently for the same relief.

Accordingly, we will deny the defendants' petition.[5]

s/ Genevieve Blatt
Genevieve Blatt, Judge

Appendix D

1. Testimony at the hearing indicates that approximately 65 to 75 per cent of the individual fines have already been paid.

2. We would note that the defendants' conduct *after* their participation in the strike is not at issue.

3. We are unpersuaded that the *reason* for the strike is a factor for consideration here. The defendants were held in contempt not for striking in response to the then alleged unfair labor practice, but for refusing to honor this Court's order directing them to return to work. Furthermore, the defendants were given an opportunity to purge themselves of civil contempt, by the order of April 19, 1982, and were apprised of the specific fines which would result from their continued participation in the strike, yet they voluntarily chose to ignore the consequences and to continue in violating the order. We would also note that the fines, as levied, are only one-half of the fines which this Court originally set, this modification being made in light of the defendants' timely attempts to negotiate with the plaintiff.

4. Docket No. 80-30657, listed to be heard in October, 1982.

5. The defendants' petition having been denied, it is unnecessary to address the plaintiff's application for dismissal of the defendants' petition.

Appendix D

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 867 C.D. 1980

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTION

Plaintiff

v.

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES etc. et al.

Defendants

ORDER

AND NOW, this 4th day of October, 1982, and after a hearing held on September 24, 1982, the defendants' petition for remittitur or reduction of fines in the above-captioned matter is hereby denied.

s/ Genevieve Blatt
Genevieve Blatt, Judge

CERTIFIED FROM THE RECORD
OCT 4 1982
Francis C. Barbush
Chief Clerk

APPENDIX E — PROPOSED DECISION AND ORDER IN *PENNSYLVANIA LABOR RELATIONS BOARD vs. COMMONWEALTH OF PENNSYLVANIA (DEPARTMENT OF JUSTICE, BUREAU OF CORRECTIONS)*

PENNSYLVANIA BUREAU OF CORRECTIONS
Hearing Examiner's Decision

Pennsylvania Labor Relations Board vs. Commonwealth of Pennsylvania (Department of Justice, Bureau of Corrections)

Case No. PERA-C-80-437-W
February 9, 1981

Before Newman, Hearing Examiner

Unfair Practices—Unlawful Interference—Obtaining Employee Petition By Force—09.362,72.18,72.311
By assaulting prision employees' union's president in forcibly securing copy of petition concerning state's alleged lack of regard for prison employees' safety, state prison unlawfully interfered with employees' protected rights.

PROPOSED DECISION AND ORDER

TEXT A Charge of Unfair Practices was filed with the Pennsylvania Labor Relations Board (Board) on July 18, 1980 (amended Charges were filed on August 18 and 22, 1980) by Local 2500, Correctional Officers of AFSCME, by and through Ronald Horvat (Union) alleging that the Commonwealth of Pennsylvania, Department of Justice, Bureau of Corrections, State Correctional Institute at Pittsburgh (Employer) had engaged in unfair practices contrary to the provisions of the Public Employe Relations Act (Act).

Appendix E

On September 4, 1980, the Board issued a Complaint and Notice of Hearing. The hearing was to be scheduled by the Board at a later time.

On September 19, 1980, the Board received the Employer's Answer to Charge of Unfair Practices and a Motion to Dismiss and Defer.[1]

Thereafter, on October 14, 1980, the Board issued an Order and Notice of Hearing fixing October 27, 1980, in Pittsburgh, Pennsylvania, as the time and place of hearing. The hearing was held as scheduled before Elliot Newman, Esquire, a duly designated Hearing Examiner of the Board, at which time all parties were given a full opportunity to examine and cross-examine witnesses, present testimony and introduce evidence.

The Examiner, on the basis of the testimony and evidence presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the Commonwealth of Pennsylvania (Department of Justice, Bureau of Corrections) is a public employer with its principal place of business located at S.C.I.P. Doerr Street, Box 990k, Pittsburgh, Pennsylvania 15233.

2. That Local 2500, Correctional Officers of the American Federation of State, County and Municipal Employes is an employe organization which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment or other conditions of employment with its principal place of business located at Post Office Box 598, Camp Hill, Pennsylvania 17011.

Appendix E

3. That on April 4, 1980, the Union held a "well-publicized" meeting at the prison for the 6:00 A.M. to 2:00 P.M. shift and there circulated a petition, stating:

> "We, the undersigned, go on record to agree with Local 2500 Executive Board that the Bureau of Correction and the local Administration show no due regard for the safety and welfare of the Correctional Officers at the State Correctional Institution at Pittsburgh. This lack of concern is the catalyst for our declining morale at the State Correctional Institution at Pittsburgh."

The meeting began at 2:00 P.M. and concluded at about 2:30 P.M. (N.T. 7, 13, 14, 15, 22, 115-116; Exhibits U-2, 11)

4. That at about 2:30 P.M., Ronald Horvat, President of the Union and a correctional officer, returned from the meeting to the "control booth" located in the prison's front rotunda, which was his assigned work location. Shortly thereafter, James Howard, Superintendent of the Institution, came into the front rotunda area and noticed John Rawie (a correctional officer) reviewing a document. Howard stated, "I don't mind you signing the petition, but, John, do it on your own time." Rawie replied, "That's fair." Howard then went into the rear rotunda area. (N.T. 13, 15, 16, 32, 42-44; Exhibits 6, 9, 10)

5. That at about 2:40 P.M., Howard returned to the front rotunda area accompanied by the Major of Guards, Lawrence Weyandt. The area was cleared of civilians and Howard and Weyandt entered the control booth where Horvat was working. Howard made three requests that Horvat give to him the petition. These requests were refused by Horvat. Howard then directed Weyandt to "Get it" (the petition) and Weyandt grabbed Horvat

and attempted to push him out of the way of the attache case which contained the petition. Horvat offered no resistance and then produced a copy of the petition from the attache case. Howard took the petition and he and Weyandt left the control booth. (N.T. 8-9, 16, 17, 18, 19, 20, 32-36, 68-69; Exhibits U-9, 10)

6. That approximately five minutes after the incident, Mr. Horvat asked to be relieved of duty and went to the emergency ward at Bellevue Suburban Hospital where "They diagnosed that it was. . .a strain on the back muscle and also contusions around the neck." He thereafter received a three-day suspension for assaulting Major Weyandt and Superintendent Howard. Mr. Horvat was not disciplined for circulating a Union petition during his working hours. (N.T. 20, 21, 22, 36, 79)

7. That Section 2 of Article 34 of the bargaining agreement in effect between the parties herein states:

> "No union member or representative shall solicit members, engage in organizational work, or participate in other union activities during working hours on the employer's premises except as provided for in the processing of grievances." (N.T. 24-26)

DISCUSSION

This case tests the credibility of the Union's witnesses (principally Mr. Horvat) and the Employer's witnesses (Messrs. Howard and Weyandt) in regard to the confrontation in the control booth of the prision. I have resolved the issue in favor of the Union and therefore find an unfair practice under Sections 1201(a)(1)and (3).

Appendix E

The matter began innocuously with Mr. Howard informing Mr. Rawie that he should sign a Union petition on his own time.[2] This evidently refers to Article 34, Section 2 of the bargaining agreement, which prohibits union activities (except processing of grievances) during working hours. Rawie agreed and the matter appeared settled. However, Howard then escalated the affair by summoning Weyandt and by forcibly securing a copy of the petition from Horvat.[3] Even if Mr. Horvat circulated the petition to Mr. Rawie during his working hours in violation of the bargaining agreement, he was not, in fact, disciplined for doing so. Furthermore, management had no *right* to a copy of the petition and clearly could not assault the Union's president to obtain one. In sum, it is undisputed that the Union engaged in the protected activity of holding a meeting in the prison, which ended at about 2:30 P.M., for the purpose of circulating a petition regarding working conditions. I find that the Employer knew of the petition and was motivated by anti-union animus in forcibly attempting (with ultimate success) to obtain a copy. *See Cranberry Township Municipal Sewer and Water Authority,* 11 PPER 11090 (1980); *St. Joseph's Hospital v. PLRB,* 473 Pa. 101, 323 A.2d 1069, 8 PPER 184 (1977).

I find no violation of Sections 803 or 1201(a)(4) of the Act.

APPENDIX F — NOTICE OF APPEAL DATED JUNE 30, 1980

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO 867 C.D. 1980

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTIONS,

Plaintiff

v.

COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO by GERALD W. McENTEE, TRUSTEE ad Litem, et al.,

Defendants

Notice is hereby given that the Defendants in the above-captioned matter, by their attorneys, hereby appeal to the Supreme Court of Pennsylvania from the Order entered in this matter on June 12, 1980, entering judgment against certain Defendants.

Dated this 30th day of June, 1980.

KIRSCHNER, WALTERS & WILLIG

BY: Richard Kirschner
Richard Kirschner

Attorneys for Defendants
1500 Walnut Street
Philadelphia, PA 19102
(215) 893-5421

Appendix F

CERTIFICATE OF SERVICE

I hereby certify that I have served the attached Notice of Appeal by mailing a copy of same, first-class mail, postage prepaid to the following:

The Honorable Genevieve Blatt
Commonwealth Court of
Pennsylvania
Sixth Floor, South Office Building
Harrisburg, PA 17120

G. Ronald Darlington,
Prothonotary
Commonwealth Court of
Pennsylvania
231-33 City Hall
Philadelphia, PA 19107

Kristen Brown, Esquire
Assistant Attorney General
Bureau of Labor Relations
900 North Sixth Street
Harrisburg, PA 17120

Paul E. Zeiders, Court Reporter
South Office Building
Harrisburg, PA 17120

Richard Kirschner
Richard Kirschner

Dated: June 30, 1980

Office-Supreme Court, U.S.
FILED
APR 18 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1647

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

COUNCIL 13, AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, by GERALD W. McENTEE, ITS TRUSTEE AD LITEM,

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTIONS,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

John D. Raup
Chief Counsel

Robert J. Schwartz
Assistant Counsel

Office of Administration and Budget Office
404 Finance Building
Harrisburg, PA. 17120
Telephone: (717) 787-9865

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QUESTION PRESENTED FOR REVIEW

1. Whether the Pennsylvania Supreme Court properly affirmed the Contempt Order of the Commonwealth Court which imposed fines on the Local Union and those Corrections Officers who refused to comply with the Commonwealth Court's Order to return to work and cease their strike in violation of the Pennsylvania Public Employe Relations Act?

JURISDICTION

The Supreme Court does not have jurisdiction over this matter.

STATUTORY PROVISIONS INVOLVED

In addition to those provisions appearing in the Petitioner's Petition for a Writ of Certiorari the Respondent wishes to draw this Honorable Court's attention to Sections 2(2) and 2(3) of the National Labor Relations Act, 29 U.S.C. §§152, which provide:

> (2) The term 'employer' includes any person acting as an agent of an employer directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor

organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any spouse, or any individual having the status of an independent contractor, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not herein defined. (Emphasis added)

The Respondent also wishes to draw this Court's attention to the following provisions of the Pennsylvania Public Employe Relations Act. Section 1004 of the Pennsylvania Public Employe Relations Act, Act of July 23, 1970, P.L. 563, 43 P.S. §1101.1004, provides as follows:

> An unfair practice by a public employer shall not be a defense to a prohibited strike. Unfair practices by the employer during the collective bargaining processes shall receive priority by the board as set forth in Article XIV.

Section 1007 of the Pennsylvania Public Employe Relations Act, 43 P.S. §1101.1007, provides as follows:

> In the event any public employe refuses to obey an order issued by a court of competent jurisdiction for a violation of the provisions of this article, the punishment for such contempt may be by fine or by imprisonment in the prison of the county where the court is sitting or both in the discretion of the court.

Section 1008 of the Pennsylvania Public Employe Relations Act, 43 P.S. §1101.1008, provides as follows:

> Where an employe organization wilfully disobeys a lawful order of a court of competent jurisdiction issued for a violation of the provisions of this article, the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court.

STATEMENT OF THE CASE

On April 16, 1980, a strike action was initiated by Corrections Officers at the State Correctional Institution at Pittsburgh. All strikes by guards at correctional institutions are expressly forbidden by the Pennsylvania Public Employe Relations Act. 43 P.S. §1101.1001 (Supp. 1982-3). Guards at the Pittsburgh State Correctional Institution are called Corrections Officers.

Pursuant to Section 1001 of the Pennsylvania Public Employe Relations Act, the Employer, the Commonwealth of Pennsylvania, sought a preliminary injunction against the Local Union and the illegal strikers before the Commonwealth Court of Pennsylvania on April 16, 1980.

The Honorable Genevieve Blatt of the Commonwealth Court granted the motion for a preliminary injunction on April 16, 1980; however, the striking guards refused to return to their duties and, in fact, actively continued their strike in knowing disregard of Judge Blatt's order.

In response to the strikers' non-compliance with the Commonwealth Court's order, Judge Blatt continued the injunction following an April 18, 1980 hearing, and further informed the strikers at that time

that they would be held in contempt of court if they did not comply with the Commonwealth Court's order by the start of the 6 o'clock workshift on April 19, 1980. When the guards scheduled to report for the 6 o'clock shift failed to report for duty, Judge Blatt held that the striking union and guards were in civil contempt of the Commonwealth Court's order and imposed the fines in accordance with Sections 1005, 1007 and 1008 of the Act, 43 P.S. §§1101.1005, 1101.1007 and 1101.1008, in a decision and order that the Petitioner seeks to place before this Court for its review. The striking guards ultimately returned to work on April 22, 1980, and were reinstated as employes by the Commonwealth.

On June 12, 1980, Judge Blatt issued an order confirming and reducing the amounts of fines imposed on both the local Union and the

guards involved in the illegal strike. On June 30, 1980, the Union appealed the Commonwealth Court's order of June 12, 1980, to the Supreme Court of Pennsylvania. On August 19, 1982, the Union filed a Petition for Remittitur or Reduction of Fines in Commonwealth Court, which was denied by Judge Blatt on October 4, 1982. On December 15, 1982, the Pennsylvania Supreme Court entered its judgment and order affirming the June 12, 1980 Commonwealth Court order per curiam.

ARGUMENT

As can be seen by a review of Judge Blatt's June 12 order, which was affirmed without opinion by a per curiam order of the Supreme Court of Pennsylvania, the only issue addressed by the Commonwealth Court and the

Pennsylvania Supreme Court was the violation of the Commonwealth Court's contempt order by the Petitioners. It must be noted that the propriety of the preliminary injunction order itself was not challenged by the Petitioner in the courts below, rather only the June 12, 1980 order confirming and reducing fines imposed, pursuant to Sections 1007 and 1008 of the Pennsylvania Public Employe Relations Act, 43 P.S. §§1101.1007 and 1101.1008, on those parties found to be in contempt of the April 19, 1980 injunction order, has been challenged. This Court has refused to exercise jurisdiction in similar situations where no federal question has been decided in the state Supreme Court from which certiorari has been sought. See Herndon v. Georgia, 295 U.S. 441, 55 S.Ct. 794 (1935).

While Petitioner has repeatedly raised its argument with regard to the alleged

unfair practice as the basis for the strike, the order which the Petitioner has chosen to appeal deals exclusively with their contemptuous conduct. As Judge Blatt observed in her Opinion of October 4, 1982:

> We are unpersuaded that the reason for the strike is a factor for consideration here. The defendants were held in contempt not for striking in response to the then alleged unfair labor practice, but for refusing to honor this Court's order directing them to return to work. Furthermore, the defendants were given an opportunity to purge themselves of civil contempt, by the order of April 19, 1982, and were apprised of the specific fines which would result from their continued participation in the strike, yet they voluntarily chose to ignore the consequences and to continue in violating the order. We would also note that the fines, as levied, are only one-half of the fines which this Court originally set, this modification being made in light of the defendants' timely attempts to negotiate with the plaintiff.

Commonwealth v. Council 13, 867 C.D. 1980 (Commonwealth Court, filed October 4, 1982), at F.N. 3. Petition at 36a.

Thus the courts of the Commonwealth of Pennsylvania have dealt solely with Pennsylvania law and have not reached the question of the validity of any federal law or policy, let alone arrived at a decision holding such federal law invalid or superseded by state law. Accordingly, there is no question properly before this Honorable Court pursuant to 28 U.S.C. §1257(3). Hartford Life Insurance Co. v. Johnson, 249 U.S. 490, 39 S. Ct. 336 (1919).

The Petitioner would argue that the Commonwealth of Pennsylvania is bound by federal policy as developed under the National Labor Relations Act. However, that Act expressly excludes employes of the states

from its coverage. Section 2(3), 29 U.S.C. §152(3). The Pennsylvania Public Employe Relations Act provides the sole statutory vehicles for the Petitioner's claim. Under Pennsylvania law, strikes by prison guards are prohibited unconditionally. 43 P.S. §1101.1001. Thus, all references to the National Labor Relations Act by the Petitioner are inapposite in that the Commonwealth of Pennsylvania is not subject to that Act either by the terms of that Act or by voluntary Commonwealth action submitting itself to that Act's policies and standards. See Pennsylvania Labor Relations Board v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975).

Because the very language of the National Labor Relations Act excludes the states, as well as their employes, from its coverage,

any application of the policy expressed in Mastro Plastics Corp. v. N.L.R.B., 350 U.S. 270, 76 S.Ct. 349 (1956) could only be by analogy. But no analogy can apply for this policy of reinstating unfair labor practice strikers has no application to the instant facts. First, the Union has not alleged a failure by the Commonwealth to reinstate the striking guards. There is no evidence in the record even suggesting that the striking guards were not reinstated by the Commonwealth. Second, the policy announced in Mastro Plastics, supra, is based on rights of self-organization guaranteed under Section 7 of the National Labor Relations Act, 29 U.S.C. §157, and would not be applicable by analogy under Section 401 of the Pennsylvania Public Employe Relations Act, 43 P.S. §1101.401, which merely defines

self-organization as "lawful activity". In fact, the only employe right conferred under Section 401 is the right to refrain from organizational activity. The Mastro Plastics doctrine is based upon an express, statutorily-conferred right to organize and protects the exercise of that right. Under the Pennsylvania Public Employe Relations Act, there is no corresponding right. The language of that Act shows a conscious decision by the Pennsylvania General Assembly to permit organization by public employes, but not to confer any right to organize. Organizational activity by employes covered under the National Labor Relations Act is therefore offered greater protection than such activity by employes covered under the Pennsylvania Public Employe Relations Act. The Pennsylvania Public Employe Relations Act

precludes application of the Mastro Plastics doctrine to public employes subject to the Pennsylvania Public Employe Relations Act. 43 P.S. §1101.1004. Because this distinction bars the application of the Mastro Plastics doctrine to the Pennsylvania Public Employe Relations Act, there is no violation of federal policy and thus there is no basis to invoke jurisdiction under 28 U.S.C. §1257(3).

At no previous time did the Petitioner assert that the Mastro Plastics doctrine should be applied to the Pennsylvania Public Employe Relations Act to hold any of its provisions invalid or unconstitutional. Petitioner relies solely on a policy the National Labor Relations Board established under the National Labor Relations Act. The Petitioner has not even challenged the

failure to adopt the same policy by the Pennsylvania Court. Petitioner's sole argument is that the Courts of Pennsylvania have failed to consider as a mitigating factor in a civil contempt proceeding a federal statute that expressly does not apply to the Commonwealth. It is the Petitioner's burden to raise in a timely fashion those arguments that it would rely on before this Honorable Court and to preserve those arguments through the lower appelate courts. The Petitioner has failed to do this. Manifestly, this is not a question of important federal policy or federal law that requires this Honorable Court's review. It is an issue of pure state law too narrow in application and impact to warrant further judicial consideration.

CONCLUSION

For all the above-stated reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Commonwealth of Pennsylvania

by

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AFFIDAVIT OF SERVICE

I hereby certify that I am this day serving the enclosed Brief in Opposition upon the person and in the manner indicated below, in accordance with the United States Supreme Court Rule 28.5.

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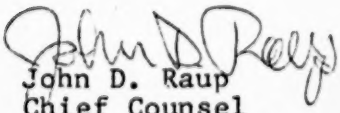

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